



A.S.No.400 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 24.04.2024

PRONOUNCED ON: 04.07.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

A.S.No.400 of 2016

M.Viswanathan

... Appellant/Plaintiff

Vs

K.Rajendran
Defendant

... Respondent /

Prayer: Appeal Suit is filed under Section 96 of Civil Procedure Code under Order 41 Rule 1 of C.P.C., against the order judgment and decree dated 23.03.2016 made in O.S.No.209 of 2011 on the file of the Principal District Court, Erode and prays to set aside the same.

For Appellant : Mr.Kaithamalai Kumaran

For Respondent : Mr.C.Sai Krishna



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JUDGMENT

The unsuccessful plaintiff is the appellant herein challenging the dismissal of his suit for recovery of money based on a promissory note

PLAINTIFF'S CASE:

2. The facts are briefly set out herein below:

(i) The plaintiff has filed the suit O.S.No.209 of 2011 on the file of the Principal District Court, Erode for recovery of a sum of Rs.13,74,598/- together with interest @ 12% per annum on principal sum of Rs.12,00,000/- from the date of the suit till the date of the payment.

(ii) It is his case that the defendant had originally borrowed a sum of Rs.2,00,000/- on 01.02.2010. Towards the discharge of the above said sum, he had issued two cheques dated 01.03.2010 and



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05.03.2010 drawn on ICICI Bank, bearing Nos.192365 and 192366 respectively each for a sum of Rs.1,00,000/- . It is his case that the above cheques had been dishonoured. However, it is also the case of the plaintiff that thereafter he had given a further sum of Rs.5,00,000/- on 15.06.2010 towards the discharge of which, the defendant had issued a cheque drawn on ICICI Bank, bearing No.192372 dated 30.08.2010. The defendant had requested the plaintiff to present the cheque for clearance only on 02.12.2010. When the cheque was so presented, the same was dishonoured with an endorsement “funds insufficient”. The plaintiff had thereafter issued a legal notice dated 14.12.2010 under Section 138 of N.I.Act and as no payments were forthcoming, he had filed S.T.C.No.521 of 2011 on the file of the Judicial Magistrate No.II, Karur. That apart, a further sum of Rs.5,00,000/- had been extended as loan to the defendant on 30.05.2010 and on the very same day, the plaintiff had issued a cheque for Rs.5,00,000/- drawn on ICICI Bank, Erode,

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bearing No.192371 dated 30.06.2010. This cheque was also presented for collection on 02.12.2010. It had also been returned with an endorsement “funds insufficient”. The plaintiff had thereafter filed a case in S.T.C.No.523 of 2011 on the file of the Judicial Magistrate-II, Karur. It is the further case of the plaintiff that since all the cheques had bounced, he has come forward with the suit in question for recovery of money.

3. WRITTEN STATEMENT OF THE DEFENDANT:

The defendant had filed a written statement denying the allegations contained in the plaint and contending that he had no transactions with the plaintiff and had not received any amounts from him. The defendant had gone on to deny the signatures in the cheques. He had also questioned the jurisdiction of the Principal District Court at Erode, since the plaintiff was residing at Kodanthur Village, Aravakurichi Taluk, Karur District and the defendant was



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residing in Namakkal and the defendant would further submit that even the criminal cases have been filed only before the Judicial Magistrate-II, Karur and therefore, the Court had no jurisdiction to entertain the suit in question. The defendant would further submit that the plaintiff, in order to file the suit within the jurisdiction of this Court, had produced the bank passbook, telephone bills and L.I.C letters to show that he is residing in the plaint address. The defendant has also taken a defense that the plaintiff did not have a wherewithal to extend such a huge amount as a loan.

4. TRIAL COURT.

The trial Court had originally framed the following issues:

- (1) வாதி கோரியுள்ளவாறு வழக்கில் கண்ட
தொகையை பிரதிவாதியிடமிருந்து வசூலிக்க
உரிமைபடைத்தவரா?



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(2) வாதி கோரியுள்ளவாறு வட்டி பெற

உரிமைபடைத்தவரா?

(3) இந்த வழக்கை விசாரிப்பதற்கு

இந்நீதிமன்றத்திற்கு அதிகார வரம்பு உள்ளதா?

(4) வாதிக்கு கிடைக்கக்கூடிய பரிகாரம் என்ன?

Thereafter, an additional issue was framed which reads as follows:

“வழக்குரையில் சொல்லப்பட்ட நாட்களில் வாதியிடம்
வாங்கிய நான்கு கடன்களுக்காக வழக்கில் சொல்லப்பட்டுள்ள
நான்கு காசோலைகள் வாதிக்கு பிரதிவாதியால்
வழங்கப்பட்டதா?”

(ii) The plaintiff had examined himself as P.W1 and marked Exs.A1 to A16. The defendant had examined himself as D.W1 and no documents were marked on his side.



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(iii) The trial Court, on perusing the evidence on record and the pleadings came to the conclusion that, the defendant has denied the borrowal, execution of the cheques as well as the financial capacity of the plaintiff however, the same has not been proved by the plaintiff. That apart, the trial Court had entertained a doubt about the jurisdiction of the Principal District Court, Erode to try the suit and would submit that the only cause of action which confers jurisdiction upon the Courts at Erode is the fact that the cheques have been deposited there. The learned Judge observed that even the criminal complaint has been lodged only at Karur and not at Erode. However, though an issue regarding the jurisdiction had been raised, the learned Judge decided not to give a finding on jurisdiction, as the learned Judge had come to the conclusion that the circumstances would prove that the plaintiff has not given a hand loan to the defendant and therefore, the cause of action for the suit is non existent. The trial



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Court arrived at this decision on the presumption that no prudent person would have extended further loan to a person as the earlier loan of Rs.2,00,000/- had not been cleared, that too the cheques issued have been returned with the endorsement “insufficient funds”. That apart, the plaintiff's contention is that he had no prior knowledge about the defendant, despite which the loan has been granted without even claiming interest. This is evident from the fact that the cheques presented for collection were filled up only with the principal amount and the interest has not been added to it. Therefore, the learned Judge dismissed the suit. Aggrieved by the same, the plaintiff is before this Court.

5. POINTS FOR CONSIDERATION:

The points that arise for consideration in the above first appeal are as follows:

(1) Whether the plaintiff has discharged the



preliminary presumption of execution of the promissory note?.

(2) Whether the defendant has discharged the onus cast upon him to prove that he has not received any amount from the plaintiff?

(3) Whether the Court at Erode had jurisdiction to try the suit and whether any part of the cause of action arose within the jurisdiction of the Courts at Erode?

6. Heard both learned counsels extensively and perused the materials available on record.

7. DISCUSSIONS:

(i) The plaintiff has come to the Court stating that the



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defendant had borrowed certain amounts and issued cheques for the amounts borrowed, which is evidenced by Ex.A1, A6, A11 and A12. Therefore, under Section 138 of the N.I.Act, the initial onus is cast upon the plaintiff to prove that the instrument has been executed by the defendant and once the same is proved, then the presumption is to be drawn in favour of the plaintiff that the instrument has been drawn for the purpose for which it has been stated. Thereafter, the onus would shift upon the defendant to prove that though this execution is proved, the instrument is not supported by consideration. Once this burden is discharged by the defendant, then the Court has to consider the other evidences available to arrive at a conclusion. The Hon'ble Supreme Court in the judgment cited on the side of the plaintiff namely *AIR 1999 SC 1008 [Bharat Barrel and Drum Manufacturing Company Vs Amin Chand Payrelal]* had set out the historical background for enacting the Negotiable Instruments Act as



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follows:
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“Generally speaking, the law relating to negotiable instruments is the law of the commercial world which was enacted to facilitate the activities in trade and commerce making provision of giving sanctity to the instruments of credit which could be deemed to be convertible into money and easily passable from one person to another. In the absence of such instruments, the trade and commerce activities were likely to be adversely affected as it was not practicable for the trading community to carry on with it the bulk of the currency in force. The introduction of negotiable instruments owes its origin to the bartering system prevalent in the primitive society. The negotiable instruments are, in fact, the instruments of credit being convertible on account of the legality of being negotiated and thus easily passable from one



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hand to another. The source of Indian law relating to such instruments is admittedly the English Common Law. The main object of the Act is to legalise the system by which instruments contemplated by it could pass from hand to hand by negotiation like any other goods. The purpose of the Act was to present an orderly and authoritative statement of the leading rules of law relating to the negotiable instruments. The Act intends to legalise the system under which claims upon mercantile instruments could be equated with ordinary goods passing from hand to hand. To achieve the objective of the Act, the Legislature in its wisdom thought it proper to make provision in the Act for conferring such privileges to the mercantile instruments contemplated under it and provide special procedure in case the obligation under the instrument was not discharged.”



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They also discussed the purport of Section 118 as follows:

“Section 118 of the Act deals with the presumptions as to negotiable instruments. One of such presumptions is "that every negotiable instrument was made or drawn for consideration, and that every such instrument when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration." This presumption is based upon a principle and is not a mere technical provision. The principle incorporated being, inferring of a presumption of consideration in the case of a negotiable instrument”.

The learned Judges had stated that the first principle relates to the difficulties that a defendant would face to prove the negative and therefore, they had observed that a negative evidence can be proved either by circumstantial or indirect evidence which would go to show that it is probable that consideration could not have passed.



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(ii) The second principle, according to the learned Judges ,is in *the context of Section 106 of the Evidence Act*. The learned Judges would state that when the other party is called upon to prove the negative and one of the circumstances by which he seeks to establish his case is through a fact which is in the knowledge and possession of the former, then the burden is on the former to produce this evidence. His failure to bring forth such evidence can be held in favour of the other party, who then would have discharged his duty of proving the negative.

(iii) The third principle according to the learned Judges is one when both parties have led evidence and the onus of proof loses all importance and becomes purely academic. Referring to this principle the learned Judges referred to the earlier judgment of the Hon'ble



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Supreme Court reported in ***AIR 1960 SC 100 [Narayan Bhagwantrao Gosavi Vs. Gopal Vinayak Gosavi]*** where the Hon'ble Supreme Court has held as follows:

"The burden of proof is of importance only where by reason of not discharging the burden which was put upon it, a party must eventually fail. Where, however, parties have joined issue and have led evidence and the conflicting evidence can be weighed to determine which way the issue can be decided, the abstract question of burden of proof becomes academic."

(iv) The learned Judges have concluded the discussion as follows:

"Upon consideration of various judgments as noted herein above, the position of law which



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emerges is that once execution of the promissory note is admitted, the presumption under [Section 118\(a\)](#) would arise that it is supported by consideration. Such a presumption is rebuttable. The defendant can prove the non-existence of consideration by raising a probable defense. If the defendant is proved to have discharged the initial onus of proof showing that the existence of consideration was improbable or doubtful or the same was illegal, the onus would shift to the plaintiff who will be obliged to prove it as a matter of fact and upon its failure to prove would disentitle him to the grant of relief on the basis of the negotiable instrument. The burden upon the defendant of proving the non-existence of the consideration can



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be either direct or by bringing on record the preponderance of probabilities by reference to the circumstances upon which he relies. In such an event the plaintiff is entitled under law to rely upon all the evidence led in the case including that of the plaintiff as well. In case, where the defendant fails to discharge the initial onus of proof by showing the non-existence of the consideration, the plaintiff would invariably be held entitled to the benefit of presumption arising under [Section 118\(a\)](#) in his favour. The court may not insist upon the defendant to disprove the existence of consideration by leading direct evidence as existence of negative evidence is neither possible nor contemplated and even if led is to be seen with a doubt. The bare denial of the



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passing of the consideration apparently does not appear to be any defence. Something which is probable has to be brought on record for getting the benefit of shifting the onus of proving to the plaintiff. To disprove the presumption the defendant has to bring on record such facts and circumstances, upon consideration of which the court may either believe that the consideration did not exist or its non-existence was so probable that a prudent man would, under the circumstances of the case, shall act upon the plea that it did not exist.”

This appears to be the principles adopted in most of the cases later in **(2022) 6 SCC 735 [Tedhi Singh vs Narayan Dass Mahant]** and **(2019) 10 SCC 287 [Uttam Ram vs Devinder Singh Hudan and Anr.]** Therefore, when the facts of the instant case is analyzed the



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initial presumption is in favour of the plaintiff inasmuch as the defendant as D.W2 has, in his own words, stated as follows:

“வா.சா.1, வா.சா.6, வா.சா.11, வா.சா.12 ஆகிய 4
காசோலைகளும் என வங்கி கணக்கில் இருந்து
கொடுக்கப்பட்டது என்றால் சரிதான். மேற்படி 4
காசோலைகளில் உள்ள கையெழுத்துக்கள் என்னுடையது
என்று சொன்னால் சரிதான்.”

“வா.சா.11, 01.03.2010 தேதியிட்ட காசோலை வா.சா.12,
05.03.2010 தேதியிட்ட காசோலை என்றால் சரிதான்.
வா.சா.11 மற்றும் 12ல் உள்ள காசோலையில் கையெழுத்தும்,
தேதியும் நானே தான் எழுதினேன் என்றால் சரிதான்.”

Therefore, the onus as per the judgment referred to above shifts upon the defendant. It has to be seen if this onus has been discharged. The defendant had pleaded 3 defenses.

a) *That he did not execute the cheques.*



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b) He did not receive any consideration.

c) The plaintiff did not have the necessary wherewithal.

(vi) As regards the first defense, the same has been disproved by the defendant in his cross examination.

(vii) With reference to the passing of the consideration, the defendant has not let in any evidence either direct or circumstantial to show that he has not received the consideration. The defendant has not stated as to how the four cheques admittedly executed by him travelled into the hands of the plaintiff. Having admitted his signatures, the defendant ought to have given the circumstances under which he had affixed his signatures to these cheques. It is not his case that these cheques have been issued to some other persons and the same have been misused by the plaintiff. The defendant has simply stated that he has not executed the cheques or received the

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consideration.

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(viii) The next factor which can be considered for arriving at a conclusion that the cheques are not supported by consideration is the wherewithal of the plaintiff. Except for a stray statement in the plaint and a single question in the form of a suggestion which has been denied, the defendant has not taken any steps whatsoever to prove that he has not received any amount from the plaintiff. He has not even demanded the production of the bank statements, income tax returns etc of the plaintiff even during the cross examination of P.W1.

(ix) The Trial Court has held in favour of the defendant only on the conjectures that no logical person would extend further loans if the earlier cheques had bounced and that the defendant had not executed any of the cheques. In this regard the Learned Judge had failed to take note of the admission of the defendant in his cross



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examination and the fact that he has not discharged the onus cast upon him to prove consideration has not passed. Therefore point for consideration No.1 and 2 are answered in favour of the plaintiff.

(x) The third point for consideration relates to the issue of jurisdiction. The jurisdiction of a court under Section 20 of the Code of Civil Procedure is fixed:

- (a) where the defendant resides or carries on business or personally works for gain,*
- (b) where, if there were several defendants one or more of them resides, or carries on business or works for gain; and*
- (c) the cause of action wholly or in part arises.*

The Petitioner in Para 8 of his plaint has pleaded as follows:



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“8) The cause of action for the suit arose on 30.6.2010, 30.8.2010, 1.3.2010 and 5.3.2010 when the defendant issued the cheques, on 2.12.2010 when the suit 'A' and B' cheques returned dishonoured on 14.12.2010 when he caused notice and on all subsequent dates when the defendant failed to pay the amount due under the suit cheques issued and presented for collection at Erode within the jurisdiction of this Honourable court.”

A perusal of Ex A1, A6, A11 and A12 shows that the cheques drawn by the defendant in favour of the petitioner is from the ICICI Bank A/c of the defendant which is at Erode and they have been presented for collection to the petitioner's bankers ; Axis Bank , Erode branch and returned by the defendant's bankers ICICI Bank of Gandhiji Road, Erode. Therefore, the cause of action for instituting the suit also arose



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at Erode and therefore the Principal District Court, Erode has the jurisdiction to entertain the suit. The 3rd point for consideration is also answered in favour of the petitioner.

(xi) In fine, the first appeal is allowed with costs. The judgment and decree of the Court below is set aside. The defendants shall pay a sum of Rs.13,74,598/- together with interest @ 9% per annum on principal sum of Rs.12,00,000/- from the date of the suit till the date of the decree and thereafter @ 6 % per annum till the date of the payment.

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Speaking order/non-speaking order
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